

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	)	
Proposal to establish Rider PORCB	)	
(Purchase of Receivables with Consolidated Billing) and	)	Docket No. 10-0138
To revise other related tariffs	)	

**REPLY BRIEF**  
**OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

**I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”) is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. RESA is devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for residential, commercial and industrial consumers. In particular, RESA is interested in a Purchase of Receivables/Utility Consolidated Billing (“POR/UCB”) program in the service territory of Commonwealth Edison Company (“ComEd”) and has been an active participant in this proceeding.<sup>1</sup>

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<sup>1</sup> RESA’s members include ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; Reliant Energy Northeast LLC; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

In its Initial Brief in this proceeding, RESA addressed four issues: 1) Commonwealth Edison Company's ("ComEd")'s proposed switching rules; 2) ComEd's proposed April 1, 2011 implementation date; 3) the per-bill fee to collect implementation costs for the Purchase of Receivables and Utility Consolidated Billing ("POR/UCB") program; and 4) requiring ComEd to include bill inserts from Retail Electric Suppliers ("RES") in its mailings.

These four issues were addressed by various parties in their initial briefs. RESA will reply to the arguments of ComEd and the Citizens Utility Board ("CUB") on ComEd's proposed switching rules; ComEd on the proposed implementation date; the Commission Staff and Dominion on the proper way to recover implementation costs; and ComEd on the subject of requiring ComEd to include bill inserts from RESs in its mailings.

In general, RESA found nothing of sufficient merit to detract from the arguments it made in its Initial Brief. Therefore, its recommendations to the Commission remain the same. First, ComEd's proposed revisions to its switching rules are premature and unnecessary at this time; these matters are properly being considered in a pending rulemaking proceeding, Docket 09-0592. Second, ComEd should not be allowed to delay the implementation of its POR/UCB program until April 1, 2011 since that could cause a delay in the development of active competition for residential and small commercial customers. Third, as a signatory to the Memorandum of Understanding among several parties, RESA supports ComEd recovering its implementation costs through a \$0.50 per-bill fee for all customer types. Fourth, ComEd should be required to include bill inserts from RESs in its mailings.

II. COMED’S PROPOSED SWITCHING RULES SHOULD NOT BE ADOPTED IN THIS PROCEEDING; THE MATTER IS BETTER ADDRESSED IN THE PENDING RULEMAKING, DOCKET 09-0592.

There are two separate problems with ComEd’s proposed switching rules. The first is ComEd’s attempt to redefine the mass market. The second is ComEd’s premature revision of switching rules to provide an 18-day enrollment/rescission period. The best solution of both of these problems is to leave them to be resolved where they should be—in the pending rulemaking to establish 83 Ill. Admin. Code Part 412, Docket 09-0592.

- A. Contrary to ComEd’s arguments, RESA is not attempting to redefine the mass market; rather, ComEd is attempting to redefine the statutory definition of small commercial customer.

ComEd argues that it had the understanding that in the ORMD workshop process, participants generally indicated that the mass market would be defined as all residential customers and those small commercial customers having demands of less than 100 kW. ComEd In. Br., p. 36 First, RESA believes that it is inappropriate for ComEd to raise discussions which occurred during the ORMD workshop process, much less misrepresent that those discussions settled this issue. Second, small commercial customers are defined in the Public Utilities Act (“PUA”) based on annual usage, specifically 15,000 kWh or less. However, ComEd’s intent appears to give extended rights and protections to many commercial customers that the statute only provides to residential and small commercial customers under 15,000 kWh of annual usage. By no means do customers with a peak demand of less than 100 kW and annual use greater than 15,000 kWh fit into the definition of small commercial customer. See Section 16-102 of the PUA.

Mr. LoCascio gave examples of commercial customers that would fall into the less than 100 kW demand category. This would include thousands of medium size commercial customers

and large regional and national chain customers, such as individual 7-Eleven stores, chain restaurants, big box retail stores, etc. These are highly sophisticated customers that do not need the additional customer protection of an extended rescission period. RESA Ex. 1.0, p.10

In fact, Mr. LoCascio testified that ComEd's attempt to extend rights, such as rescission periods, to the 100 kW demand group would most likely be adverse to such customers. By expanding rescission rights in terms of length and scope, ComEd is increasing risk premiums RESs must include in supply costs that then must be passed on to all customers that have this right. This point is also addressed later in this brief. Needlessly increasing electric rates threatens to stifle the development of this market as well as causing unwarranted economic loss to customers, in this case, residential and commercial customers up to 100 kW in peak demand if ComEd's proposal is adopted. *Id.*, pp. 9-10

ComEd also argues that "it would be difficult and costly for ComEd to identify such customers based on their usage." ComEd In. Br., p.36. However, Section 16-102 of the Public Utilities Act prescribes (and has done so for well over ten years) that the definition of small commercial customer is based on usage, namely 15,000 kWh or less in annual usage. Moreover, the definition of small commercial customer being considered in Part 412 is consistent with the PUA—it would include customers with annual consumption below 15,000 kWh, because this is the standard for small commercial customer as defined in Section 16-102 of the PUA, not the 100 kW peak demand threshold proposed by ComEd. At any rate, Mr. LoCascio offered a solution, that is neither difficult nor costly, to ComEd's problem of being unable to comply with the statutory definition of "small commercial customer" contained in the PUA, as discussed in RESA's Initial Brief at pages 5-7.

Finally, ComEd argues that RESA's proposal should be rejected because it would further delay the implementation date of its POR/UCB program. ComEd In. Br., pp. 38-39 ComEd's actions belie this argument. While ComEd was quick to revise its proposed tariffs to delay implementation from December 1, 2010, to April 1, 2011, when Staff's witness proposed rejection of ComEd's switching rules in this proceeding (ComEd Ex. 3.0, p. 28), ComEd's witness did not reinstate the December 1, 2010 date when the Staff's witness withdrew that proposal. To date, ComEd has not committed to a firm go-live date earlier than April 1, 2011, assuming that ComEd's switching rules were accepted in this proceeding. At any rate, as stated previously, RESA offered a simple solution to ComEd's problems that would not require a delay to April 1, 2011. RESA In. Br., pp. 5-7

B. ComEd's proposed 18 day rescission/enrollment period should be rejected.

RESA recommends that the Commission reject ComEd's proposed switching rules because they prejudge an issue that should be decided in the pending rulemaking proceeding to adopt 83 Ill. Admin. Code Part 412, Docket 09-0592. While the Commission Staff originally made the same recommendation (Staff Ex.1.0, pp. 25-27), the Staff witness subsequently withdrew the recommendation in his rebuttal testimony. Staff Ex.5.0, pp. 29-30 The Staff witness did so with the following conditions: 1) that the Commission make clear in its Order in this proceeding that it is not determining a new rescission period for residential and small commercial customers when it approves ComEd's tariff revisions; and, 2) that the Commission is not making any determination as to whether any new rescission period will apply to non-residential customers using more than 15,000 kWh annually. *Id.* Interestingly, RESA notes that these two conditions refer to the two matters which ComEd claims have been already been

agreed to during the previous workshop process. Obviously, Staff and RESA do not think that these two matters are set in stone at this point in time.

While RESA agrees that the Staff's proposed conditions would be absolutely necessary if the Commission were to accept ComEd's proposed switching rules in this proceeding, RESA still argues that those switching rules should be rejected in this proceeding because the reason behind the Staff's withdrawal of its recommendation—to avoid delaying the go-live date to April 1, 2011—is, as demonstrated above, illusory. In addition, ComEd has requested six months to confirm its tariff after the conclusion of the Part 412 rulemaking. ComEd In. Br. in Ill. C. C. Docket 09-0592, p. 9 Thus, if the Commission approves ComEd's switching rules in this docket, they may be in place for six months after the Commission enters its Order in the Part 412 rulemaking, an inappropriate result.

In support of its position, ComEd incorrectly argues that contrary to RESA's position, the 18 calendar day period is an enrollment window, not a rescission window. ComEd In. Br., p. 37 An example will help demonstrate that rescission is properly measured from the execution date of the contract. If a contract is executed on August 1 and there were a 10-day rescission period, the customer would have until August 11 to rescind the contract. If, as a result of ComEd's switching rules, the customer can effectively rescind the contract after ComEd processes the contract, the customer would have until August 19 to rescind the contract, then there is an 18 day rescission period. Under ComEd's logic, if rescission were tied to ComEd's processing requirements and ComEd took 60 days to process an enrollment, ComEd would argue that there is still a 10 day rescission period even though the customer entered into the contract seventy days before. This makes no sense and, as stated previously, this is a contested issue in the pending rulemaking proceeding. Many different parties have expressed divergent opinions about the

rescission period in Docket 09-0592, a rulemaking of general applicability. That is the proceeding in which the issue should be resolved and RESA repeats its firm belief that that is where it should be addressed.

ComEd also argues that CUB/AG supports the 18-day period which is designed to provide added customer protections for small customers that may not be as sophisticated or experienced as larger customers in navigating the market. ComEd In. Br., pp. 37-38.

Unfortunately, as RESA has already demonstrated, ComEd's proposed rescission rules extend the 18-day period to large commercial customers who are sophisticated and experienced in these matters, such as national chains of restaurants and big box stores. While CUB's intentions may be laudable, ComEd's attempt to stretch them is not. Moreover, CUB is an active participant in Docket 09-0592 and has voiced its opinions on the rescission issue in that proceeding.

In conclusion, RESA recommends that the Commission reject ComEd's proposed tariff language regarding the ability of a customer to rescind (or cancel) a pending enrollment as well as related language providing for an extended enrollment waiting period. ComEd's tariff language unnecessarily prejudices issues that are separately being addressed in a comprehensive rulemaking proceeding to adopt rules in 83 Ill. Admin. Code Part 412, Ill. C. C. Docket 09-0592.

ComEd would be free to submit new tariff language, if necessary, upon conclusion of the Part 412 proceeding. That being said, RESA does not want ComEd's implementation of POR/UCB to be further delayed, which ComEd has indicated would occur. *Id.*, p. 11. This issue will be addressed in the next section of this Reply Brief.

### III. COMED SHOULD NOT BE ALLOWED TO DELAY ITS START-UP DATE TO APRIL 1, 2011.

ComEd argues that any change in the definition of mass market or the proposed switching rules will push back the go-live date. ComEd In. Br., pp. 38-39 However, as noted previously, ComEd has not stated that if there is no change in the definition of mass market or the proposed switching rules, the go-live date would be restored to December 1, 2010. Putting that aside, as also previously stated, RESA's proposed alternative can be accomplished without creating an extended waiting period for enrollments and without the need for the Commission to approve the tariff language proposed by ComEd in this proceeding. RESA Ex. 1.0, pp. 14-15

A delay beyond December 1, 2010, is not acceptable given that ComEd has already delayed the implementation date far beyond that of the Ameren Illinois Utilities and there is an alternative to ComEd's approach. RESA notes that the Ameren Illinois Utilities (AmerenCILCO, AmerenCIPS, and AmerenIP) ("AIU") adopted tariffs providing for POR/UCB almost one year ago. RESA Ex. 1.0, p. 14 Any further delays needlessly stall marketing efforts to mass market customers and should be rejected by the Commission.

#### IV. START-UP AND ADMINISTRATIVE COSTS ASSOCIATED WITH THE PURCHASE OF RECEIVABLES PROGRAM SHOULD BE RECOVERED THROUGH THE 50 CENT PER BILL RATE PROPOSED BY COMED.

The Commission Staff argues that the Commission should reject ComEd's proposed \$0.50 per bill charge to recover the costs of implementing POR/UCB Program. Instead, the Staff recommends that the Commission order the recovery of implementation and administrative costs from participating RESs through a fixed percentage charge, as the Commission had done for the AIU. Moreover, Staff recommends that the Commission incorporate the same level of cost recovery that it approved for the AIU, 0.68%. Staff In. Br., pp. 4-35. Staff's Initial Brief makes the same arguments that were contained in the testimony of the Staff witness making the proposal, arguments that were completely refuted in the rebuttal testimony of ComEd (ComEd



Ex. 3.0, pp. 6-14, ICEA (ICEA Ex. 2.0, pp. 3-10) and RESA (RESA Ex. 1.0, p. 15), as well as in the initial briefs of those parties. ComEd In. Br., pp. 15-18; ICEA In. Br., pp. 6-14; RESA In. Br., pp. 13-15 RESA sees no need to restate the reasons why ComEd's proposal should be accepted and Staff's proposal rejected. However, RESA will address one overall issue raised by the Commission Staff, as well as address the only party supporting Staff's proposal.

Staff's overall issue appears to be that neither its witness' recommended discount rate, nor that of ComEd, is superior because while it is true that there is no correlation between the costs of implementing POR/UCB and the level of customers' usage, there is also no correlation between the costs of implementing POR/UCB and the number of bills issued. Staff In. Br., p. 10

In view of the lack of correlation between implementation costs, usage and the number of issued bills Staff projects that RESs will not market to small volume customers under the \$0.50 per bill charge. Such speculation and conjecture should play no part in the implementation of ComEd's POR/UCB program. Therefore, the Commission should not accept Staff's method because of Staff's speculation that ComEd's proposed per bill charge would discourage RESs from signing up small volume residential customers. Staff In. Br., pp. 19-27 In fact, Staff speculates that RESs may decide it's not worth entering the residential market at all. *Id.*, p. 23 The Commission should not base its decision on Staff's speculation. Staff's assumption that RESs will "cherry-pick" high-usage residential customers, and avoid low-usage residential customers is false. Additionally, there have been informal discussions regarding a number of mechanisms that would encourage residential offerings and shopping that simply would not allow for usage-targeted marketing efforts. These mechanisms include utility referral programs, municipal aggregation, and a rate comparison website. The evidence shows the \$0.50 per bill charge was the product of settlement discussions with ICEA and RESA, and agreed to by CUB.

The \$0.50 per bill charge represents an attempt to strike a balance between full and somewhat timely cost recovery and a discount rate that is not so high as to make RESs' participation under Rider PORCB cost prohibitive and/or make full cost recovery from RESs doubtful. ComEd Ex. 1.0, pp. 17-22 Moreover, ComEd's position was supported by both ICEA and RESA, associations which, between the two of them, represent 19 retail energy marketers. ICEA indicates that the cost recovery mechanism proposed by ComEd has the potential to ensure participation in Rider PORCB by RESs in a substantial and widespread manner. On the contrary, if the Commission Staff witness' percentage were adopted by the Commission, ICEA indicated its concern that RESs would choose not to place their commercial customers on Rider PORCB. ICEA In. Br., pp. 6-14 Similarly, RESA supports the \$0.50 per bill charge. RESA In. Br., pp. 13-15.

In contrast to the support of the many RESs, represented by RESA and ICEA, of ComEd's proposed discount rate, the Staff has the support of only one RES, Dominion Retail, which basically asks the Commission to ignore the positions of ICEA and RESA because, according to Dominion, it, unlike many of the other RESs, has focused its business on residential and small commercial customers. Dominion In. Br., p.1 Dominion makes such a bold claim despite the fact that not only is Dominion not licensed to serve residential electric customers in Illinois, it itself acknowledges that to "date, Dominion has made no electricity sales in Illinois". *Id.*, p. 4 (emphasis added). In contrast, ICEA has three members currently licensed to serve residential electric customers within ComEd's service territory (Champion Energy LLC, Direct Energy LLC and Integrys Energy Services, Inc.) and RESA has three (Liberty Power in addition to Direct and Integrys), as well as a fourth, Energy Plus Holdings LLC, which should receive its license in the near future. ICEA In. Br., p. 5; RESA In. Br., p. 1 In light of this, Dominion's support for Staff's proposed percentage based discount rate adds no merit to that proposal.

V. COMED SHOULD BE REQUIRED TO INCLUDE BILL INSERTS FROM RETAIL ELECTRIC SUPPLIERS IN ITS MAILINGS TO CUSTOMERS.

ComEd argues that it should not be required to include RESs' bill inserts to customers in its mailings, noting that the Commission Staff, which originally made this proposal, withdrew the proposal in its rebuttal testimony. ComEd In. Br., p. 41 However, ComEd notes that Dominion supports the inclusion of bill inserts. (RESA also supports a Commission requirement that ComEd include RESs' bill inserts in its mailings. RESA In. Br., pp. 15-16)

First, ComEd argues that, under Rider PORCB, RESs will already be permitted to include messages on ComEd's bills. ComEd In. Br., p. 42 However, this misses the point—there are required bill inserts that must be provided to customers. For example, Title 83 Section 421.40 Regarding Customer Billing Environmental Disclosure Statements provides that:

Every utility and ARES shall, on at least a quarterly basis, provide **in billing inserts** [emphasis added] the following information, in a clearly legible manner, to the maximum extent practicable

Having the ability to include messages on ComEd's bill does not satisfy the requirement of Section 421.40.

Second, ComEd argues that it would be costly for ComEd to include RESs' bill inserts. ComEd In. Br., p. 42. However, ComEd currently requires RESs to include its bill inserts in RESs' mailings under Rider SBO. Staff Ex. 1.0, pp. 28-29 ComEd's one-sided concern should be rejected.

Third, ComEd states that it cannot present bill inserts to a customer who receives eBills. ComEd In. Br., pp. 42-43. RESA does not believe that Staff's original proposal would have required ComEd to insert a bill insert in an electronic bill; however, RESA has no objection to the Commission making this clarification in its Order.

Fourth, ComEd objects to the pricing of this bill insert suggested by the Staff, namely that ComEd be paid an amount equal to the net avoided cost of the RES. *Id.*, p. 43 As Dominion states in its Initial Brief, operational and cost issues could be worked out in a workshop process. Dominion In. Br., p. 17 RESA agrees that while the Commission should order ComEd to include bill inserts from RESs in its mailings to customers in its Order in this proceeding, the specifics could be resolved in a workshop convened (and brought to a conclusion) shortly after the Order is entered in this proceeding.

## VI. CONCLUSION

For all of the reasons stated above, the Commission should accept RESA's positions that:

- 1) switching rules and rescission rights should be addressed in Docket 09-0592, not in this proceeding;
- 2) the Commission should direct ComEd to implement Rider PORCB in December 2010;
- 3) the Commission should approve the discount rate and per-bill fee supported by the Memorandum of Understanding entered into by ComEd, RESA and ICEA; and,
- 4) the Commission should require ComEd to include supplier bill inserts in its mailings to customers, subject to operational and cost issues being resolved in an expedited manner in a workshop process.

Respectfully submitted,

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**NOTICE OF FILING**

Please take note that on September 14, 2010, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the Reply Brief of the Retail Energy Supply Association in this proceeding, ILL. C. C. Docket 10-0138.

Dated: September 14, 2010

/s/GERARD T. FOX  
Gerard T. Fox

**CERTIFICATE OF SERVICE**

I, Gerard T. Fox, certify that I caused to be served copies of the Reply Brief of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system in ILL. C. C. Docket 10-0138 via electronic delivery on September 14, 2010.

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